

Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-002094-MR

JOSEPH MONEY

APPELLANT

v.

APPEAL FROM WHITLEY CIRCUIT COURT
HONORABLE DANIEL BALLOU, JUDGE
ACTION NO. 07-CR-00189

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, KELLER AND LAMBERT, JUDGES.

COMBS, JUDGE: Joseph Brian Money, *pro se*, appeals from an order of the Whitley Circuit Court that denied his motion to vacate an order assessing costs and fees against him. After our review, we affirm.

In November 2007, Money was indicted in the Whitley Circuit Court for first-degree burglary and second-degree assault. Money qualified as an indigent person for purposes of public defender representation pursuant to Kentucky

Revised Statutes (KRS) Chapter 31, and the Department of Public Advocacy was appointed as his legal counsel.

In May 2009, Money agreed to enter a plea of guilty to the assault charge in exchange for dismissal of the burglary charge. In July 2009, he was sentenced by the court to serve seven-years' imprisonment. In addition, Money was ordered to pay court costs in the amount of \$125; he was also assessed administrative and attorney's fees in the amount of \$450 to be paid at the rate of \$50 per month following his release from prison.

More than two years later, Money, *pro se*, filed a motion "to dismiss costs/fee/fines." The motion was summarily denied by the trial court. Money appealed to this court and argued that the imposition of court costs and attorney's fees upon an indigent defendant violates the provisions of KRS 31.110(1).¹ In support of his argument, Money cited the decision of the Kentucky Supreme Court in *Edmonson v. Commonwealth*, 725 S.W.2d 595 (Ky. 1987). In *Edmonson*, the Court held that court costs may not be imposed upon an indigent person. 725 S.W.2d at 596.

Money's motion, *pro se*, came two years after entry of the trial court's final judgment and sentence. Since the trial court lost control of its judgment ten days after its entry, it did not err by summarily denying Money's motion to alter, amend, or vacate. See Kentucky Rules of Civil Procedure (CR) 52.02, 59.04, 59.05. Consequently, its order must be affirmed.

¹ Money was granted leave to proceed *in forma pauperis*.

Furthermore, the Supreme Court of Kentucky has recently refined the rule applied in *Edmonson*. It distinguished between a “needy” person and a “poor” person in *Maynes v. Commonwealth*, 361 S.W.3d 922 (Ky. 2012). The Court held that a “needy” person entitled to legal representation under the provisions of KRS 31.100 does not necessarily qualify as a “poor” person who would be exempt from the imposition of court costs under the provisions of KRS 23A.205. That statute requires the imposition of costs after the defendant has been convicted. The *Maynes* Court held that even when a public defender has been appointed, the imposition of costs may be proper unless the defendant qualifies as a “poor” person pursuant to KRS 453.190(2), which defines a “poor” person as one who is “unable to pay the costs and fees of the proceeding in which he is involved without depriving himself or his dependents of the basic necessities of life, including, food, shelter, or clothing.” Money has not argued that he is a poor person, nor has he otherwise addressed the distinction raised in *Maynes*.

With respect to the public defender fee, the provisions of KRS 31.211 permit an order requiring the defendant to pay for appointed counsel according to his ability to do so. As the court observed in *Maynes*, the restoration of a defendant’s freedom is also the restoration of his ability to work, thus justifying the trial court’s order to pay the statutorily mandated court costs pursuant to the provisions of KRS 23A.205 and the public defender payment-of-fee provision of KRS 31.211.

We are compelled to affirm the order of the Whitley Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Joseph Money, *pro se*
Wheelwright, Kentucky

BRIEF FOR APPELLEE:

Jack Conway
Attorney General of Kentucky

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